IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 19TH JULY 2007 / 28TH ASHADHA 1929

O.P.No.10969 of 1997(S)

(R.A.NO.201 (COCH)/1995 IN I.T.A.NO.425 (COCH)/1991 OF THE INCOME-TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN).

PETITIONER:-

THE COMMISSIONER OF INCOME-TAX,
TRIVANDRUM.

BY STANDING COUNSEL FOR GOVERNMENT OF INDIA (TAXES)
SRI.P.K.RAVINDRANATHA MENON (SR.)
SRI.GEORGE K.GEORGE.

RESPONDENT:-

SHRI.M.P.PHILIP,
TRIVANDRUM.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

O.P.No.10969 of 1997-S

APPENDIX

PETITIONER'S ANNEXURES:-

ANNEXURE-A - COPY OF THE ASSESSMENT ORDER DATED 4.5.1989.

ANNEXURE-B - COPY OF THE ORDER OF THE DEPUTY COMMISSIONER OF INCOME TAX (APPEALS) DATED 15.1.1991.

ANNEXURE-C - COPY OF THE ORDER OF THE TRIBUNAL DATED 11.4.1995.

ANNEXURE-D - COPY OF THE REFERENCE APPLICATION AND ITS ENCLOSURE DATED 2.8.95.

ANNEXURE-E - COPY OF THE ORDER OF THE TRIBUNAL DATED 4.10.1996.

H.L.DATTU, C.J. & K.T.SANKARAN, J.

O.P.No.10969 of 1997

Dated, this the 19th day of July, 2007

JUDGMENT

H.L.Dattu, C.J.

After the disposal of I.T.A.No.425 of 1991 by the Income Tax Appellate Tribunal, the Revenue has filed an application under Section 256(1) of the Income Tax Act, 1961 (Act for short) requesting the Tribunal to state the case and refer the question of law for consideration and decision by this Court. The Tribunal has rejected the application so filed by the Revenue. Therefore, the Revenue has filed this original petition under Section 256(2) of the Act requesting this Court to direct the Tribunal to state the case and refer the following question of law for our consideration and decision. It is as under:

> "Whether, on the facts and in the circumstances of the case the pension received by the assessee from the Government of Malaysia is assessable under the provisions of the Income-tax Act, 1961?

2. The question of law raised by the Revenue is no more debatable in view of the decision of this Court in the case of **Commissioner of Income-Tax** v. **V.K.Vasudevan Pillai** [(1996) 222 ITR 693]. The Court has observed as under:

> "The assessee was a resident but not ordinarily resident in India. He was a pensioner of the Government of Malaysia and on retirement settled permanently in India. In the assessment order, article 18(3) of the Agreement for Avoidance of Double Taxation between India and Malaysia was considered. It is as follows: "Any pension paid by the Government of one of the contracting States to any individual may be taxed in that contracting State". The assessing authority assessed the pension. The appellate authority observed that pension received in India from abroad by pensioners residing in this country for past services rendered in the foreign country could not be

charged to tax in India on receipt basis. Apart therefrom the appellate authority, on evidence, found that the pension was first credited in the United Asia Bank, Bernad, Malaysia and thereafter remitted to India to the pensioner through the United Commercial Bank. On the basis of this factual position, the appellate authority observed that the pension could be deemed to have been received abroad in the first instance. Accordingly, it was held that the amount should be exempted from Indian tax. This was upheld by the Tribunal. On a reference:

Held, that the amount of pension in the first instance had already been treated as income in Malaysia and received as such as far as the assessee was concerned. Article 18(3) of the Agreement for Avoidance of Double Taxation between India and Malaysia emphasised that the amount was not taxable in India. Additionally, apart from the provisions of section 5(1)(a) of the Income-tax Act, 1961 the provisions of section 5(1)(c) relating to income and source in regard thereto would clearly show, on the basis of the proviso thereto that any income accruing or arising to the assessee outside India during the year in question is not to be included unless it is derived from a business controlled in or a profession set up in India. The pension was not taxable in India."

3. Since the issue raised in this original petition is already considered and decided by this Court, at this stage, it may not be necessary for this Court to direct the Tribunal to state the case and refer the question of law for our consideration and decision. Therefore, the original petition filed by the Revenue under Section 256(2) of the Act requires to be rejected and it is rejected.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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